

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SERGIO HERNANDEZ, :
Petitioner, :
: :
-against- : 21 Civ. 6753 (LGS)
: :
LAKE AVE PIZZA LLC, et al., : ORDER
Respondents, :
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, a hearing on the December 7, 2021, Order to Show Cause for Default Judgment is scheduled for December 16, 2021;

WHEREAS, the materials in support of default judgment contain deficiencies that need to be resolved prior to the hearing:

First, Plaintiff has not assured the Court that he has fully identified and properly served Defendant Rey “Doe,” Junior. Entry of judgment against unnamed or fictitious parties may not be proper. *See Buatista v. ABC Corp*, No. 19 Civ. 3963, 2021 WL 1225872, at *2 n.2 (S.D.N.Y. Apr. 1, 2021).

Second, Plaintiff’s affidavit of service of the Order to Show Cause is deficient because it is not sworn or made under the penalty of perjury as set out in 28 U.S.C. § 1746.

Third, many allegations in the Complaint are not well-pleaded and therefore cannot establish liability. *See Related Companies, L.P. v. Ruthling*, No. 17 Civ. 4175, 2019 WL 10947100, at *3 (S.D.N.Y. July 23, 2019) (“[A] defendant’s default only establishes its liability based on the well-pleaded allegations of the complaint . . . ”). For example, Defendant Lake Ave Pizza LLC is also referred to as Lake Av Pizza LLC and Lake Avenue Pizza Contracting Corp, the Complaint refers to both Defendant Corporation and Defendant Corporations but does

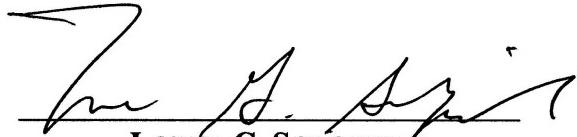
not define those terms and certain sentences in the Complaint are incomplete or unclear, such as sentences in paragraphs 35, 42 and 51. It is hereby

ORDERED that the Order to Show Cause hearing scheduled for December 16, 2021, is adjourned to **January 12, 2022, at 4:20 P.M.** It is further

ORDERED that Plaintiff shall file a letter by **December 21, 2021**, stating whether he intends to proceed on the Complaint or file and serve an amended complaint. Plaintiff's letter shall also state whether any legal authority exists for entering default judgment against Rey "Doe" Junior without identifying his last name and provide any additional information Plaintiff possesses about the identity of Rey "Doe" Junior and whether Rey "Doe" Junior has been served. It is further

ORDERED that if Plaintiff does not intend to file an amended complaint, he shall file an updated affidavit of service of the Order to Show Cause and related papers.

Dated: December 15, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE